

REMARKS

The Amendments

The claims are replaced with new claims. The new claims are within the scope of the previous claims but, with the changes, it was less confusing if a new claim set was presented. As previously, the claims are directed to the compounds, compositions thereof, methods of making and methods of using. The new claims remove the solvate/hydrate terms. The new compound/composition claims also proviso out the compound disclosed in the Bagli reference (see 35 U.S.C. §102 issue below). The new method of use claims now only recite treatment of a condition concerning impairment of learning and memory. The new claims further specify the “heteroaryl” and “heterocyclyl” terms in the claims; see, e.g., page 5, lines 23-30, of the specification. Support for new claims 26 and 27 (within the scope of the independent method claim) is found in the specification at page 14, lines 12-21. The specification also provides information on the pertinent activity of the compounds; see pages 14-20 of the specification.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which may have been canceled by any of the above amendments.

The First Rejection under 35 U.S.C. §112, first paragraph

The rejection of claims 1-5, 7 and 11-12 under 35 U.S.C. §112, first paragraph, for lack of enablement is believed to be rendered moot in view of the new claims. The rejection was based on the solvate and hydrate terms. These terms are no longer in the claims. Thus, the rejection should be withdrawn.

The Second Rejection under 35 U.S.C. §112, first paragraph

The rejection of claims 11-12 under 35 U.S.C. §112, first paragraph, for lack of enablement is believed to be rendered moot in view of the new claims. The rejection was based on the recitation of treating disorders of perception and concentration. These terms are no longer in the claims. The Office action states that the disclosure is enabling for the current method claims reciting treating disorders of learning and memory. Thus, the rejection should be withdrawn.

The Rejection under 35 U.S.C. §102

The rejection of claims 1-5 and 7 under 35 U.S.C. §102 as being anticipated by Bagli (EP 130735) is believed to be rendered moot in view of the new claims.

In the new compound/composition claims, the compound disclosed in Bagli giving rise to the rejection is provisoed out. Thus, Bagli discloses no compounds which fall within the scope of the instant claims.

It should be noted that the method of use claims do not include the proviso. However, Bagli does not anticipate or render obvious these claims because it provides no disclosure or suggestion of such a method of using its compounds for treatment of a condition concerning impairment of learning and memory. Bagli discloses the use of its compounds as cardiotonic agents for increasing cardiac contractility; see page 2, first paragraph. It should be noted that there is a related Bagli article of record (J.Med.Chem., 31(4), pp. 814-823 (1988)) which also discloses the same compound as in the EP patent application. However, it also provides no disclosure or suggestion of a method of using the compounds for treatment of a condition concerning impairment of learning and memory. The article discloses a list of compounds (see Table 1) which were tested for inotropic/chronotropic properties. It only indicates that some of the compounds (not the one of interest here) were of particular interest due to their properties and may be useful in treatment of congestive heart failure (see page 818, last paragraph, and page 817, second paragraph).

For the above reasons, it is urged that Bagli (neither the EP patent application nor the article) anticipates the current claims. Thus, the rejection under 35 U.S.C. §102 should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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